

## CHAPTER VI : MINISTRY OF CHEMICALS AND FERTILISERS

### Department of Fertilisers

#### 6.1 Avoidable payment of demurrage charges

**Failure of the Department of Fertilisers in not getting the rates of handling and distribution of imported Fertilisers approved by the scheduled date resulted in avoidable payment of demurrage charges of Rs 31.12 lakh.**

**Department of Fertilisers did not fix any time schedule for calling of tenders for finalisation of rates for handling contracts.**

The Department of Fertilisers appoints handling agents for handling and distribution of imported urea every year. The agents are appointed for one year with effect from April of the year and the contract is extendable for two months i.e upto May of the following year. Department of Fertilisers has not prescribed any time schedule for calling of tenders and their processing, etc. for finalisation of rates for handling contracts with the agents.

**Department issued notice-inviting tenders in April 1996**

The Department of Fertilisers issued Notice Inviting Tenders on 12 April 1996 for finalisation of rates for handling contract of imported Fertilisers for 1996-97 and got the rates approved only on 11 July 1996.

**Discharge of urea from two vessels did not take place due to non-finalisation of rates.**

Before the rates for 1996-97 could be finalised, two vessels namely "Prabhu Gopal" and "Jagravi" with 17,873 tonne and 30892 tonne of bulk urea had arrived at the nominated ports "Tuticorin" and "Rozy" on 17 June 1996 and 22 June 1996 respectively. The discharge of urea from the vessels could not be obtained due to non-finalisation of handling contract for 1996-97. After finalisation of the rates of handling contract on 11 July 1996 the discharge of urea by the approved agents could be started only on 20 July 1996 and 12 July 1996 respectively.

**Proposal for approval of rates remained under correspondence with the Department of Expenditure and the rates were finally approved in July 1996**

Scrutiny of the records of the Department of Fertilisers revealed that the Department of Fertilisers failed to ensure that the process of approval and appointment of handling agents is completed before commencement of the financial year. The Department sent the proposal for approval of rates for handling contract for 1996-97 to the Department of Expenditure, Ministry of Finance on 14 May 1996, which remained under correspondence for about two months. The Department of Expenditure returned the proposal six times between 22 May 1996 to 8 July 1996. The Ministry of Finance finally approved the rates on 11 July 1996.

Delay in finalisation of rates, thus, resulted in pre-berthing detention of the vessels Prabhu Gopal and Jagravi resulting in payment of demurrage charges of Rs 27.87 lakh and Rs 3.25 lakh respectively to the owners of vessels.

The Department stated in September 1999 that it could not be faulted for delay as Department of Expenditure took exceptionally long time in giving concurrence to the proposal, which led to payment of demurrage charges. The Department further added that the proposal for getting the rates approved also got delayed partly due to change of governments in a short period of less than one month.

The reply of the Department underscores the administrative inertia of the system. Departments of Fertilisers and Expenditure should set a schedule for different stages in finalisation of the contract and establish a system of accountability in cases of delays in future.

## **6.2 Failure of the Department to honour its guarantee**

**Government of India did not redeem its sovereign guarantee, which arose in 1991 and 1992 on account of failure of the Fertiliser Corporation of India to repay the loans of Rs 16 crore obtained by it from Life Insurance Corporation of India in February and May 1989 on the guarantee of Central Government.**

It was highlighted in paragraph 3 of the Report of CAG of India for the year ended March 1996, No. 2 of 1997 Union Government (Civil), that Department of Chemicals and Petro-chemicals failed to redeem its sovereign guarantee which arose in 1986 on account of failure of IDPL<sup>1</sup> to repay the loan of Rs 5 crore obtained by it from LIC<sup>2</sup> in 1984 on the guarantee of the Central Government.

In their Action Taken Note on this paragraph in February 1999, the Ministry did not furnish any explanation for why it did not honour the guarantee and what remedial measures were being taken to ensure that sovereign guarantees are honoured in future. The amount of the principal and compound interest of Rs 20.39 crore had not been paid to LIC by the Department of Chemicals and Petro chemicals as of 31 March 1996.

Subsequent sample checks disclosed another case in which Department of Fertilisers provided guarantee and undertook to pay the principal and interest due to LIC on loans of Rs 12 crore and Rs 8 crore taken by Fertiliser Corporation of India in February and May 1989.

**Government of India stood as a guarantor to repay the principal and interest to LIC in case of two loans taken by the FCI in February and May 1989**

<sup>1</sup> Indian Drugs and Pharmaceuticals Limited (IDPL)

<sup>2</sup> Life Insurance Corporation of India(LIC)

The loans were repayable by FCI<sup>3</sup> in three and two annual instalments during February 1990 and February 1992 respectively.

**FCI failed to repay the subsequent instalments of principal and interest**

The FCI repaid only first instalment of Rs 4 crore in February 1990 in respect of first loan and defaulted in repayment of further instalments of principal and interest.

**Consequent upon default in repayment of loans by the FCI, LIC invoked the guarantee.**

Consequent upon default in repayment of loans by FCI, LIC invoked the guarantee and requested the Department of Fertilisers in January 1998 to remit the balance amount of loan of Rs 16 crore and the compound interest of Rs 26.59 crore due thereon as at the end of December 1997. Department of Fertilisers did not make any payment to the LIC as of March 1999. The outstanding liability of interest has gone up to Rs 36.38 crore in March 1999.

**Department requested LIC to defer any action for revocation of guarantee.**

Meanwhile, FCI filed a petition before the BIFR<sup>4</sup> in April 1998 seeking protection under the Sick Industrial Companies Act 1985. Department of Fertilisers requested LIC in March 1999 to defer any action for revocation of the Government guarantee against the outstanding loans and the interest thereon till the pronouncement of BIFR in the matter.

**The department stated that repayment of the principal and interest rehabilitation proposal would be submitted to BIFR.**

The Department stated, in June 1999, that rehabilitation proposal had been finalised wherein a provision for repayment of the principal amount and the re-negotiated interest components of the inter corporate loan had also been made and the proposal would be shortly submitted for approval of the competent Authority and to BIFR.

The stand of the Department is not acceptable. Reference to BIFR for revival of a sick unit and honouring the sovereign guarantee by the Government of India are two distinct and unrelated issues. A lender, precisely to safeguard its interest against any default by the borrower, obtains the guarantee, whatever may be the reason for default. Failure to honour the guarantee compromises the credibility of a legal instrument provided by none other than the Government of India. Besides, it also brings into the question of Government using its influence or authority over the lender, who being a body/authority under the Government of India is unable to take recourse to any other measures available to it for enforcement of guarantee.

It is recommended that Government should ensure that once it provides a guarantee, it should promptly honour it, as and when a valid claim is made.

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<sup>3</sup> Fertilizer Corporation of India (FCI)

<sup>4</sup> Board for Industrial and Financial Reconstruction (BIFR)